disturbing ducks coming toward an ancient decoy. *Carrington* v. *Taylor*, 11 East 571. And an exercise of the right to fish in navigable waters, that would exclude all others from fishing therein, will be enjoined. *Morris* v. *Graham*, 16 Wash. 343. Then, although the right to hunt on public lands may be exercised solely as a recreation, it should, nevertheless, be adequately protected against what may be termed unlawful competition.

INNKEEPERS — DUTY TO GUESTS — LIABILITY OF INNKEEPERS FOR INSULT TO GUEST. — The plaintiff was a guest at the defendant's hotel. At night one of the employees of the hotel, by order of the defendant, forcibly entered the plaintiff's room, used insulting language, and threatened to turn her out as a disreputable woman. *Held*, that the defendant is liable. *De Wolf* v. *Ford*, 40 N. Y. L. J. 811 (N. Y., Ct. App., Nov. 7, 1908).

This decision reverses the decision of the lower court criticized in 21 HARV. L. REV. 58.

INSURANCE — DEFENSES OF INSURER — EXECUTION OF INSURED FOR CRIME. — A insured his life with the defendant company under a policy which contained no provision against death at the hands of justice. The policy was executed at the office of the company in Wisconsin and by its terms was made payable there. A special act of the Wisconsin legislature incorporating the company empowered it "to make all and every insurance appertaining to or connected with any life risks." The insured committed a murder and was convicted and executed therefor. *Held*, that there may be a recovery on the policy. *McCue* v *Northwestern Mut. Life Ins. Co.*, 14 Va. L. Reg. 584 (C. C. A., Fourth Circ.).

The federal court here goes squarely against a prior decision in the United States Supreme Court. *Burt* v. *Ins. Co.*, 187 U. S. 362. But it justifies itself on the ground that the policy is a Wisconsin contract and therefore its validity should be determined by the public policy of that state. It finds that insurances like that in the principal case are not against the public policy of Wisconsin because the statute allows insurance on "any life risks," and because the Supreme Court of Wisconsin has allowed recovery on silent policies where the insured has committed suicide. *Patterson* v. *Mutual Life. Ins. Co.*, 100 Wis. 118. It is interesting to note that the court considers the question of public policy involved in execution cases as identical with that raised by suicide cases. For a discussion of cases similar to the one under consideration, see 21 HARV. L. REV. 530.

INTERPLEADER — SCOPE OF THE REMEDY — INABILITY OF COURT TO ENJOIN. — By proceedings in a state court C attached a judgment recovered by B against A in a federal court. A filed a bill of interpleader in the state court. *Held*, that the bill will not lie, since a state court cannot interfere with the power of a federal court to enforce its judgment. *Smith* v. *Reed*, 70 Atl. 961 (N. J., Ct. Ch.). See NOTES, p. 294.

JOINT WRONGDOERS — LIBEL — CONTRACT TO INDEMNIFY PRINTERS AGAINST CLAIMS FOR LIBEL. — The plaintiffs agreed to publish the defendant's paper for him upon his promise to indemnify them "against any claims whatever in respect of any libel appearing." The plaintiffs were later sued for a libel which had appeared with their full knowledge, and had to pay damages. They then sued the defendant on the contract of indemnity. *Held*, that they cannot recover. *Smith & Son* v. *Clinton*, 25 T. L. R. 34 (Eng. K. B. D., Oct. 28, 1908).

The law allows no contribution between intentional and conscious wrongdoers. *Merryweather* v. *Nixan*, 8 T. R. 186. And contracts to indemnify such wrongdoers are void. *Arnold* v. *Clifford*, 2 Sumn. (U. S.) 238. The present case, therefore, is supported by the authorities. *Atkins* v. *Johnson*, 43 Vt. 78. It has never been decided, however, whether an express contract of indemnity would be a nullity where both parties are equally anxious to avoid the publica-

tion of libellous matter. Contribution is generally allowed between negligent but unconscious wrongdoers. *Armstrong Co.* v. *Clarion Co.*, 66 Pa. 218. See 12 HARV. L. REV. 176. *A fortiori*, contracts to indemnify non-negligent unconscious wrongdoers will be supported. *Stone* v. *Hooker*, 9 Cow. (N. Y.) 154. And in construing a contract of indemnity no presumption will be indulged that a contract contrary to public policy was intended. *Babcock* v. *Terry*, 97 Mass. 482. So, such an agreement between an editor and a printer who are *bona fide* may be construed as one to indemnify for all expenses incurred in groundless suits. See *Babcock* v. *Terry*, *supra*. And it is submitted that the action on the indemnity contract should not cease to be maintainable because, in a doubtful case, the court support the jury in finding that there was an actionable libel.

MALICIOUS PROSECUTION — PROBABLE CAUSE — CONVICTION SUBSEQUENTLY REVERSED AS EVIDENCE. — The defendant instituted criminal proceedings against the plaintiff, who pleaded guilty and was convicted; but the judgment was reversed on appeal. The plaintiff then brought an action for malicious prosecution. *Held*, that the conviction is conclusive evidence of probable cause for instituting the criminal proceedings. *Smith* v. *Thomas*, 62 S. E. 772 (N. C.).

In an action for malicious prosecution the plaintiff must prove that there was no probable cause for instituting the criminal proceedings. *Gurley* v. *Tomkins*, 17 Colo. 437. Many courts hold that a judgment of conviction, although subsequently reversed, is *prima facie* evidence of probable cause. *Nicholson* v. *Sternberg*, 61 N. Y. App. Div. 51. But the weight of authority supports the principal case in holding that a conviction in the original court is conclusive evidence of probable cause. *Parker* v. *Huntington*, 73 Mass. 36. There is some authority for the rule that such conviction is not evidence of probable cause when for any reason it carries no probative force. *Nehr* v. *Dobbs*, 47 Neb. 863. But it is generally considered evidence unless secured by fraud or perjury. *Gilmore* v. *Martin*, 115 Ill. App. 46; *Crescent City Live Stock Co.* v. *Butchers' Union Slaughter-House Co.*, 120 U. S. 141. Logically, however, the fact of a conviction subsequently reversed should be evidence in such an action only so far as it tends to establish that the defendant had reasonable grounds for instituting the criminal proceedings and an honest belief in the guilt of the accused at the time such proceedings were commenced. For it is upon these tests that the defendant's case depends, not upon the evidence produced at the trial. *Harkrader* v. *Moore*, 44 Cal. 144.

MARRIAGE — NULLIFICATION — PERMANENT ALIMONY. — The defendant went through a form of marriage with the plaintiff, which would have been valid if the former had not already been married. Thereafter the plaintiff materially helped him in acquiring property. The trial court annulled the marriage, and granted to the plaintiff an undivided fourth interest in the defendant's realty. *Held*, that it is proper to dispose of the defendant's property in the same way as in a case of divorce. *Buckley* v. *Buckley*, 96 Pac. 1079 (Wash.).

In awarding alimony, it is proper to consider not only the damages suffered by reason of the marriage, but also the amount of the husband's property, his ability to earn money, and the station in which he ought to maintain the wife if the marriage relation were continued. See *Pauly* v. *Pauly*, 69 Wis. 419. Alimony is awarded on this comprehensive basis, because it is regarded as compensation for the loss of the wife's legal rights under the marriage contract. Some courts, however, disregard this reason, and award alimony in annulling marriages which are void *ab initio*. *Strode* v. *Strode*, 3 Bush (Ky.) 227. *Contra*, *Stewart* v. *Vandervort*, 34 W. Va. 524. Such decisions are unjustifiable, for a void marriage confers none of the legal rights of marriage upon the parties. See *Smith* v. *Smith*, 5 Oh. St. 32; *Emerson* v. *Shaw*, 56 N. H. 418. In the principal case the marriage is void, but the plaintiff should have compensation for the defendant's wrong. *Werner* v. *Werner*, 59 Kan. 399. The compensation should, however, be given as in tort for fraud or deceit, rather than on the broader theory of alimony. See *Pollock* v. *Sullivan*, 53 Vt. 507; *Withee* v.